IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7145 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KAMALSINGH CHANDANSINGH RATHODTHROGH BROTHER - Petitioner(s)

Versus

COMMISSIONER OF POLICE AHMEDABAD &3 - Respondent(s)

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Appearance :

MR NM KAPADIA for Petitioner No(s).: 1.

Mr.P.D.Bhate, A.G.P.for Respondent No(s).: 1,2,3.

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CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 22/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 01.04.2005 passed by the Police Commissioner, Ahmedabad City in exercise of the

powers conferred upon him under sub-section(2) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to three criminal cases which are filed under the Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.
3. At the time of hearing of this petition, it is argued by the learned advocate appearing for the petitioner that the so called activities alleged against the petitioner are not prejudicial to the maintenance of public order and public health. It is submitted that the detaining authority is required to rely upon credible and cogent material in arriving at the subjective satisfaction. Learned advocate appearing on behalf of the petitioner has relied upon the decision of this Court (Coram : J.R.Vora, J) dated 09.05.2005 and has submitted that the alleged activities of the detenu were not directly or indirectly causing or were likely to cause any harm, danger or alarm among the general public and, therefore, the impugned order is required to be quashed and set aside.
4. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no. 1.
5. The three offences were registered against the petitioner detenu under the Bombay Prohibition Act ; first offence on 12.01.2003, second on 17.10.2003 and third on 27.02.2005 .It is now well settled that in each case, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether the activities are prejudicial to maintenance of “public order” or only “law and order”. Therefore, in the instant case, what is required to scrutinize is, as to whether the activities alleged against the petitioner detenu would affect the maintenance of “law and order” or maintenance of “public order”. Considering the facts and circumstances of the case and considering the judgments referred to above, it would be difficult to say that the offences alleged against the petitioner would affect the even tempo of public life. In that view of the matter, the detaining authority was not justified in arriving at the satisfaction that the activities of the petitioner detenu were likely to adversely affect maintenance of “public order”. Under the circumstances, the detention order is required to be quashed and set aside.
6. In view of what is stated above, the petition is allowed. The order of detention dated 01.04.2005 is quashed and set aside. The detenu Kamalsingh Chandansingh Rathod is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

srilatha